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Filing date: **03/16/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91191056
Party	Defendant Franciscan Vineyards, Inc.
Correspondence Address	JOHN M RANNELLS BAKER & RANNELLS PA 575 ROUTE 28, SUITE 102 RARITAN, NJ 08869-1354 UNITED STATES jmr@br-tmlaw.com
Submission	Testimony For Defendant
Filer's Name	John M. Rannells
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Signature	/john rannells/
Date	03/16/2011
Attachments	91191056 price transcript.pdf (36 pages)(1507756 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
White Rock Distilleries, Inc.

Opposer

v.

Franciscan Vineyards, Inc.

Applicant
-----X

Opposition No. 91191056

Mark: PINNACLES RANCHES

Serial No.: 77/598674


**COMBINED NOTICE OF FILING OF TESTIMONY TRANSCRIPT AND EXHIBITS
PURSUANT TO 37 CFR 2.125(c) and NOTICE OF SERVICE OF TRANSCRIPTS AND
EXHIBITS PURSUANT TO 37 CFR 2.125(a)**

Applicant, Franciscan Vineyards, Inc., hereby files the trial testimony of Deborah A.
Price, taken on March 2, 2011 along with the corresponding exhibits 1-3 (all attached hereto).

A copy of the referenced testimony transcript and exhibits was served upon the
Opposer's attorneys on March 16, 2011 via first class mail postage prepaid to the following
address. Daniel I. Schloss, Esq., Greenberg Traurig, LLP, 200 Park Avenue, 34th Floor, New
York, N.Y. 10166

Respectfully submitted,

BAKER and RANNELLS PA



John M. Rannells
Attorneys for Applicant
575 Route 28, Suite 102
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **COMBINED NOTICE OF FILING OF TESTIMONY TRANSCRIPT AND EXHIBITS PURSUANT TO 37 CFR 2.125(c) and NOTICE OF SERVICE OF TRANSCRIPTS AND EXHIBITS PURSUANT TO 37 CFR 2.125(a)** in re White Rock Distilleries, Inc. v. Franciscan Vineyards, Inc., Opposition No. 91191056 was forwarded by first class postage pre-paid mail this 16th day of March, 2011 to the Opposer's attorneys at the following address:

Daniel I. Schloss, Esq.
Greenberg Traurig, LLP
200 Park Avenue, 34th Floor
New York, N.Y. 10166



John M. Rannells

DATED: March 16, 2011

1
2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
4 -----

5 WHITE ROCK DISTILLERIES, INC.,

6 Opposer,

7 -vs-

8 FRANCISCAN VINEYARD, INC.,

9 Applicant.

10 Opposition No.: 91191056

Mark: PINNACLES RANCHES

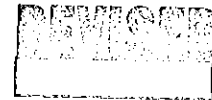
11 Serial No.: 77/598674
12 -----

13
14 Trial Testimony of DEBORAH A.

15 PRICE, held at the Constellations Wines
16 U.S., Canandaigua, New York, on March 2,
17 2011, before DEBORAH R. SALESKI, Court
18 Reporter and Notary Public in and for
19 the State of New York.
20
21
22
23
24

25 Job No. NJ316490

ORIGINAL



1
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EXHIBITS

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1	Notice to Take Testimony	4
2	Electronic Code of Federal Regulations	11
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1
2 D E B O R A H A. P R I C E, having been called as
3 a witness, being duly sworn by the notary public present,
4 testified as follows:

5
6 MR. RANNELLS: This is a proceeding
7 before the United States Patent and Trademark
8 Office, Trademark Trial and Appeal Board.
9 It's an opposition proceeding. Opposition
10 number 91191056 captioned White Rock
11 Distilleries, Inc., versus Franciscan
12 Vineyards, Inc.

13 My name is John Rannells and I'm with the
14 law firm Baker And Rannells, PA, and we are
15 attorneys for the applicant, Franciscan
16 Vineyards, Inc. Also present with me today is
17 Neil Friedman from the office of Baker And
18 Rannells. Also present here today at the
19 deposition is Daniel Schloss.

20 Daniel, would you please make your
21 presence.

22 MR. SCHLOSS: I'm Daniel Schloss. I'm
23 with the law firm of Greenberg Traurig and I
24 represent White Rock Distilleries in this
25 proceeding.

1 Direct - Price

2 MR. RANNELLS: Please mark this
3 Exhibit 1.

4 (Whereupon, Applicant's Exhibit 1 was
5 marked for identification, on this date.)
6

7 DIRECT EXAMINATION BY MR. RANNELLS:

8 Q. Ms. Price, I'm going to show you what has been
9 marked as Applicant's Exhibit Number 1 and ask you to
10 review this. Review it carefully, all of the pages?

11 A. (Witness complies.)

12 Q. Drawing your attention to the first page, have
13 you seen this document before?

14 A. Just a couple minutes ago.

15 Q. Okay. And could you identify what it is?

16 A. It's a notice of your taking my testimony.
17 The time though --

18 MR. RANNELLS: I'll put that on the
19 record. We had originally scheduled Ms. Price
20 to appear at 9:30 this morning and there was a
21 scheduling issue, so Mr. Guggino did appear at
22 9:30 in her stead and she's now appearing at
23 whatever time it is right now in Mr. Guggino's
24 stead insofar as scheduling is concerned.

25 Ms. Price, would you please describe for

1 Direct - Price

2 us your educational background?

3 A. I'm a graduate of St. Lawrence University with
4 a Bachelor's in economics and I have a Master's in
5 accounting from Clarkson University.

6 Q. And when did you receive your Master's from
7 Clarkson?

8 A. 1976.

9 Q. Okay. And after you finished your Master's
10 where were you first employed?

11 A. I was employed by what was then Touche Ross &
12 Company.

13 Q. Could you spell that?

14 A. T-O-U-C-H-E R-O-S-S.

15 Q. What did you do there?

16 A. I was an entry level accountant. It's a
17 public, certified public accounting accountancy practice.

18 Q. Where is that located?

19 A. It was located in Buffalo, New York.

20 Q. And where were you next employed?

21 A. Fisher Price Toys.

22 Q. And what were your responsibilities as Fisher
23 Price Toys?

24 A. I was there for 11 years. It was all in the
25 accounting area, accounting finance from plant

1 Direct - Price

2 operations, controllership to director -- or to manager
3 of reporting, compliance there, internal audits.

4 Q. What was your title there when you left if you
5 recall?

6 A. It was something like manager of reporting.

7 Q. Okay. And where were you employed next?

8 A. From there I went to Colad Printing, a small
9 printing company in south Buffalo.

10 Q. All right. What were your responsibilities
11 there?

12 A. I was the controller.

13 Q. Okay. Where were you employed next?

14 A. Huntingdon Engineering & Environment.

15 Q. What were your responsibilities there?

16 A. I was a senior analyst and I did HR benefit
17 programs, the financial side of them though.

18 Q. And after that?

19 A. After that I worked for Hyperion
20 Telecommunications, a subsidiary of Adelphia Cable.

21 Q. And your responsibilities there were?

22 A. I was the controller.

23 Q. And after that?

24 A. I came to at that time it was Canandaigua Wine
25 Company which now is Constellation.

1 Direct - Price

2 Q. By Constellation do you mean Constellation
3 brands or Constellation Wines U.S.?

4 A. I work for Constellation Wines U.S.

5 Q. Okay. What is your -- when you first started
6 at Constellation Wines U.S., what were your duties and
7 responsibilities?

8 A. I was in the finance department, so director
9 of finance.

10 Q. All right.

11 A. And then promoted to vice president of
12 finance.

13 Q. And what is your current position with CWUS?

14 A. Vice president of regulatory affairs.

15 Q. And what are your responsibilities and duties
16 as vice president of regulatory affairs?

17 A. I ensure that the company, that the wineries
18 are operating in compliance with federal and state
19 regulations from an operation's viewpoint. I also
20 oversee some label certifications, COLAs.

21 Q. How many people report to you?

22 A. In my organization there is six people, but
23 two direct reports.

24 Q. Okay. And what is the main purpose of
25 reporting to you? What is reported to you?

Direct - Price

A. I have -- the department is separated into two areas; one is federal audits and regulations, and the other one is more state focused and state licensing and permits.

Q. Okay. When you say --

A. As well as COLAs is on that side.

Q. Okay. When you say "regulations," what are you referring to?

A. The IRC, 27 IRC -- or the 27 CFR, those regulations for both wine and spirits.

Q. Okay. Could you describe for us the relationship between CWUS and the Franciscan Vineyards, Inc.?

A. CWUS, Inc., and Franciscan Vineyards, Inc., are sister companies both owned by Constellation Brands, Inc.

Q. As part of your duties and responsibilities do you -- do you have responsibilities over federal label approvals that are filed on behalf of CWUS or any of its divisions or subsidiaries?

A. Yes.

Q. What does that responsibility entail?

A. To ensure we're in compliance with the federal regulations related to labels on wine, wine and spirits

Direct - Price

really.

Q. Okay. Do you ever visit the TTB online website?

A. Yes, all the time.

Q. All right. Would you describe what that website is?

A. Well, it's a very good website. If you have questions about the federal laws governing labels, importing, exporting, winery operations, it has all the forms that you need. From there you can search and it gets you out into the internet and you can search the actual regs.

Q. So do you use the TTB online website as a resource for questions regarding regulatory issues for wine labeling and advertising?

A. Yes.

Q. Other than that do you -- how do you educate yourself as to the federal regulations as they pertain to wine labeling?

A. We had two of the higher people from TTB on site within the last two years to come in and talk to us about labels and give us an opportunity to ask questions of things that were unique to us, so that was extremely informative. And then I've gone to several seminars

Direct - Price

that -- a piece of those seminars was related to labeling and then I look things up. I mean I go onto the website, I look them up, I search the regs, I read Part 4 which is labeling.

Q. And do you have occasion to look at label approvals?

A. Yes.

Q. And are you familiar with the form for applying for label approval?

A. Yes.

Q. Is there a line on there for fanciful names?

A. Yes, there's a box for it.

Q. And is there a requirement that a fanciful name be inserted in that box?

A. For wine?

Q. For wine.

A. For wine, there's no requirement that it's there.

Q. Okay.

MR. RANNELLS: Could you mark this Exhibit 2, please.

(Whereupon, Applicant's Exhibit 2 was marked for identification, on this date.)

Direct - Price

BY MR. RANNELLS:

Q. Ms. Price, I'm going to show you what's been marked as Applicant's Exhibit 2 and ask you to review each page.

A. (Witness complies.) Mm-mm.

Q. These are excerpts from a website, electronic website, could you identify what these excerpts are?

A. It's the electronic Code of Federal Regulations part Title 27 the alcohol, tobacco and firearms and it's specifically Part 4 which deals with labeling and advertising of wine.

Q. All right. And these are just certain sections from that that are included in this exhibit; is that correct?

A. Correct. You've got the table of contents.

Q. And the table of contents, yes. Is there anything in this -- in these pages that refers to whether or not it is required to have a fanciful name inserted on an application rather than on a C-O-L-A application?

A. There's a reference in 4.34 class and type.

Q. What does that reference say?

A. "In addition to the mandatory designation for the wine there may be stated a distinctive or fanciful name or a designation in accordance with trade

Direct - Price

understanding."

Q. Is it your understanding based upon this section of the regulations that the placing of a fanciful name on a label approval is permissive but not mandatory?

A. Correct. It's optional, it says it may be stated.

Q. Okay. Thank you. In looking over -- when you go onto the TTB website, online website, are there other resources -- are other resources available to you that are helpful in explaining the regulations to people that visit the site?

A. Can you --

Q. Sure.

A. -- say that again in a different way?

Q. Do they have any resources, separate publications, for example, that you can access online if you have certain questions other than just the federal regulations?

A. Yeah, they have all kinds of narratives, they have question, frequently asked questions and answers. They have copies of -- they put -- industry circulars that you can get to, you can get to forms. They put out newsletters that you can reference and go find there.

Q. And do you review those newsletters when

1 Direct - Price

2 they're issued?

3 A. Yes, I get them. There's a way you can sign
4 up and get them automatically.

5 Q. Okay. And do you review these industry
6 circulars also that you refer to?

7 A. Yes, I review the new ones that come out and
8 if I'm researching something, oftentimes it will take you
9 back to a previous industry circular.

10 Q. And what is the purpose of the industry
11 circulars again?

12 A. Usually it's to clarify an issue that is --
13 that is out there or just to clarify the regs. Sometimes
14 they'll have frequently asked questions on them so
15 they're just trying to help educate the public.

16 Q. All right.

17 MR. RANNELLS: Would you mark this
18 Exhibit 3, please.

19 (Whereupon, Applicant's Exhibit 3 was
20 marked for identification, on this date.)

21 BY MR. RANNELLS:

22 Q. Ms. Price, I'm showing you what's been marked
23 as Applicant's Exhibit 3 and ask you to review this
24 carefully.

25 A. (Witness complies.) Okay.

Direct - Price

Q. Are you aware that there is a requirement for placing a particular government warning on wine labels?

A. Correct, it's mandatory information on the wine label.

Q. Okay. And is there anything in this particular -- well, could you identify what the exhibit is first?

A. Yeah, it's what we call an industry circular number 90-1 that was put out March 21st, 1990 that's from the Department of Treasury or the TTB, the Alcohol, Tobacco Trade Bureau.

Q. Is there anything in this particular circular that deals with government warning statements?

A. The whole circular appears to be questions and answers regarding the government warning statement.

Q. All right. And is there any -- are there any particular references to whether or not the government warning statement that became mandatory around this time required the submission of new label approvals in conjunction with the placing of the government warning on the labels?

A. I think if you go to question 15, the question is must a new label application be submitted to add only the government warning statement and the answer to 15

Direct - Price

says no; however, the resubmission is recommended to ensure compliance.

Q. As part of your preparation for your deposition here today did you review any label approvals for Estancia Wines?

A. I did.

Q. All right. And did any of those label approvals have a fanciful name set forth in the application?

A. Some of them did; some of them didn't.

Q. Okay. Based upon your understanding that it's optional to put a fanciful name in the application, have you reached any conclusion as to whether the consistency of the manner in which fanciful names may or may not be put on the Estancia label approval applications?

A. Because they're not mandatory information, it doesn't seem like -- there are some that are; some that aren't that we put in there. They don't seem to be consistent.

Q. Okay. And have you reviewed label approvals of other parties other than Estancia or other than wines that are under the umbrella of CWUS?

A. Yes.

Q. Okay. And in your experience is there a

1 Cross - Price

2 consistency on the use of the fanciful label box?

3 A. I would say no, it seems like sometimes it can
4 be the catch all box for varietal or other information.

5 Q. Okay.

6 MR. RANNELLS: Can we take one minute.

7 (Whereupon, a discussion was held off the
8 record.)

9 MR. RANNELLS: I am finished with direct.

10

11 CROSS-EXAMINATION BY MR. SCHLOSS:

12 Q. Good afternoon, Ms. Price, just a couple of
13 brief questions for you. Are you familiar with a TTB
14 regulation specific to the use of the term, terms
15 vineyard or ranch on a wine label?

16 A. Yes.

17 Q. What can you -- describe the criteria for use
18 of those terms on a wine label as far as you know?

19 A. It refers to the percent of graphs that have
20 to come from that area in order to be able to put it on a
21 label.

22 Q. Is it 95 percent do you know?

23 A. I believe so a ranch I believe it's 95.

24 Q. Do Estancia wines that have the term Pinnacles
25 Ranches on their label, do they comply with that

1 Cross - Price

2 regulation as far as you know?

3 MR. RANNELLS: Objection. Calls for a
4 legal conclusion.

5 Q. Okay. From your perspective, as the person
6 knowledgeable about the regulations, do you believe that
7 those labels comply with that requirement?

8 MR. RANNELLS: Objection. Failure to lay
9 a foundation.

10 Q. I think you've testified that you're
11 responsible for regulatory compliance with respect to
12 wine labels; is that correct?

13 A. Correct.

14 Q. Okay. So in your role -- well, as far as
15 you're aware and in your role, I understand you're not a
16 lawyer, but you are a compliance person at the company,
17 as far as you're aware do the Estancia labels having the
18 term Pinnacles Ranches on them comply with this
19 requirement?

20 A. We use the term ranches plural, so meaning it
21 comes from several ranches.

22 Q. Okay. I'm sorry what's the significance of
23 having ranches plural?

24 A. The regulations say Ranch one place. Our
25 descriptor is ranches, Pinnacles Ranches.

Cross - Price

Q. Okay. Do you know how many Pinnacles Ranches there are?

A. I do not.

Q. Do you know whether they're located in the same geographic area?

A. I do not.

Q. Okay. Ms. Price, are you familiar with a notice of proposed rule making published by the TTB in November regarding the use of terms such as Ranch?

A. Not specifically that there's been a ruling.

MR. RANNELLS: Objection. You said a proposed ruling, correct?

MR. SCHLOSS: I'm sorry?

MR. RANNELLS: Did you say proposed?

MR. SCHLOSS: Proposed rule making, yes.

MR. RANNELLS: Okay.

BY MR. SCHLOSS:

Q. In November of 2010 the TTB issued a request for public comments on a number of issues relating to these terms. One of their requests for comments is regarding the terms vineyard, orchard, farm and ranch on wine labels and advertisements and whether those terms convey specific information about the product to consumers and if so what that information is. Do you

Cross - Price

have any view about what those terms convey to consumers in the context of wine labels?

A. Yeah, it's a sub -- another way to describe where the grapes are coming from, another way of identifying further subdividing, identifying a brand.

Q. And would that identification hold true with respect to the designation Pinnacles Ranches?

A. Pinnacles Ranches would describe where the grapes are coming from.

Q. Okay. Thank you. No further questions.

MR. RANNELLS: Nothing further. Thank you.

(Time 12:15 p.m.)

*

*

*

REPORTER'S CERTIFICATE

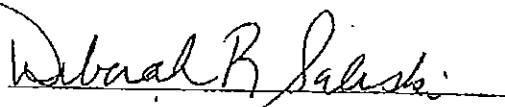
I, DEBORAH R. SALESKI, Court Reporter and
Notary Public, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken;

I further certify that I am not a relative or
employee of any attorney or of any of the parties nor
financially interested in the action.

A handwritten signature in cursive script, reading "Deborah R. Saleski", written over a horizontal line.

DEBORAH R. SALESKI

Notary Public

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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-----X
White Rock Distilleries, Inc.

Opposer

v.

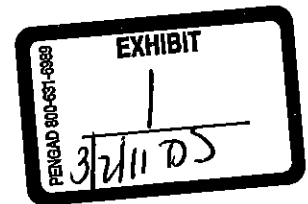
Franciscan Vineyards, Inc.

Applicant
-----X

Opposition No. 91191056

Mark: PINNACLES RANCHES

Serial No.: 77/598674



NOTICE OF TAKING TESTIMONY
PURSUANT TO 37 CFR SECTION 2.123

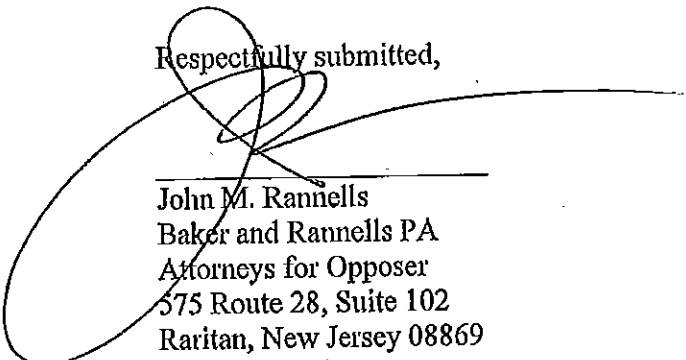
PLEASE TAKE NOTICE that on Wednesday, March 2, 2011, beginning at 9:30 a.m. at the offices of Constellation Wines U.S., 235 North Bloomfield Rd, Canandaigua, N.Y. 14424, testimony will be taken on behalf of Applicant, Franciscan Vineyards, Inc., in the above-captioned opposition proceeding, pursuant to the Rules of Practice in Trademark Cases, before a Notary Public or some other person authorized by law to administer oaths, of the following witness:

Deborah Price
Vice President Regulatory Affairs, Constellation Wines U.S.

The oral examination will continue from day-to-day until completed. You are invited to attend and cross-examine.

Respectfully submitted,

Dated: February 18, 2011



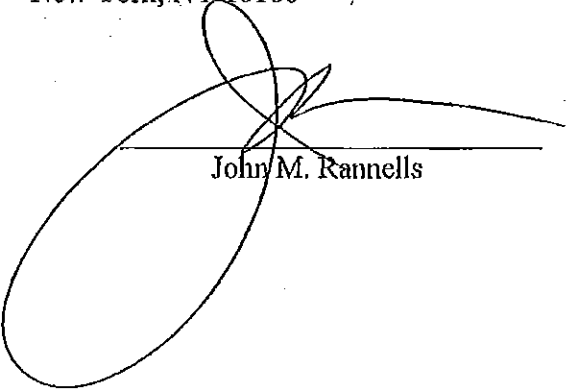
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Taking Testimony of Deborah Price was served via first class mail, postage prepaid, this 18th day of February, 2011 upon Opposer at the following address of its counsel of record:

Daniel I. Schloss
Greenberg Traurig, LLP
200 Park Avenue, 34th Floor
New York, NY 10166

DATED: February 18, 2011



John M. Rannells

ESTTA Tracking number: **ESTTA394210**

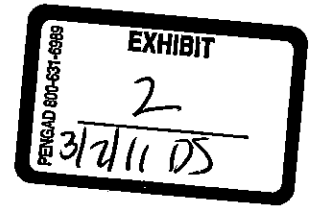
Filing date: **02/18/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Proceeding	91191056
Party	Defendant Franciscan Vineyards, Inc.
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Signature	/john rannells/
Date	02/18/2011
Attachments	91191056 notice test price.pdf (2 pages)(61678 bytes)

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Electronic Code of Federal Regulations
e-CFR
TM



e-CFR Data is current as of February 24, 2011

Title 27: Alcohol, Tobacco and Firearms

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PART 4—LABELING AND ADVERTISING OF WINE

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Subpart K—Use of the Term “Organic”

§ 4.101 Use of the term “organic.”

Authority: 27 U.S.C. 205, unless otherwise noted.

Source: T.D. 6521, 25 FR 13835, Dec. 29, 1960, unless otherwise noted.

Editorial Note: Nomenclature changes to part 4 appear by T.D. ATF-425, 65 FR 11890, Mar. 7, 2000.

Subpart A—Scope

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§ 4.1 General.

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The regulations in this part relate to the labeling and advertising of wine.

constitute a final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition for purposes of the time frames for decision set forth in paragraph (b) of this section.

(d) *Availability of information* —(1) *General.* TTB will promptly post to its public Web site, <http://www.ttb.gov>, all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB Web site will be available to the public pursuant to 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

- (i) The request must be in writing;
- (ii) The request must clearly identify the information to be kept confidential;
- (iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;
- (iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and
- (v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

[T.D. TTB-53, 71 FR 42267, July 26, 2006]

§ 4.33 Brand names.



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(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the appropriate TTB officer finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualifications shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 4.34 Class and type.



(a) The class of the wine shall be stated in conformity with subpart C of this part if the wine is defined therein, except that "table" ("light") and "dessert" wines need not be designated as such. In the case of still grape wine there may appear, in lieu of the class designation, any varietal (grape type) designation, type designation of varietal significance, semigenetic geographic type designation, or geographic distinctive designation, to which the wine may be entitled. In the case of champagne, or crackling wines, the type designation "champagne" or "crackling wine" ("petillant wine", "frizzante wine") may appear in lieu of the class designation "sparkling wine". In the case of wine which has a total solids content of more than 17 grams per 100 cubic centimeters the words "extra sweet", "specially sweetened", "specially sweet" or "sweetened with excess sugar" shall be stated as a part of the class and type designation. The last of these quoted phrases shall appear where required by part 24 of this chapter, on wines sweetened with sugar in excess of the maximum quantities specified in such regulations. If the class of the wine is not defined in subpart C, a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. The statement of composition will not include any reference to a varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation. All parts of the designation of the wine, whether mandatory or optional, shall be in direct conjunction and in lettering substantially of the same size and kind.

(b) An appellation of origin such as "American," "New York," "Napa Valley," or "Chilean," disclosing the true place of origin of the wine, shall appear in direct conjunction with and in lettering substantially as conspicuous as the class and type designation if:

- (1) A varietal (grape type) designation is used under the provisions of §4.23;
- (2) A type designation of varietal significance is used under the provisions of §4.28;
- (3) A semi-generic type designation is employed as the class and type designation of the wine pursuant to §4.24(b);
- (4) A product name is qualified with the word "Brand" under the requirements of §4.39 (j); or
- (5) The wine is labeled with the year of harvest of the grapes, and otherwise conforms with the provisions of §4.27. The appellation of origin for vintage wine shall be other than a country.

[T.D. ATF-53, 43 FR 37677, Aug. 23, 1978; T.D. ATF-48, 44 FR 55839, Sept. 28, 1979, as amended by T.D. ATF-195, 50 FR 763, Jan. 7, 1985; T.D. ATF-229, 51 FR 20482, June 5, 1986; T.D. ATF-312, 56 FR 31077, July 9, 1991; T.D. ATF-370, 61 FR 539, Jan. 8, 1996; T.D. ATF-431, 65 FR 59724, Oct. 6, 2000]

§ 4.35 Name and address.



(a) *American wine* —(1) *Mandatory statement.* A label on each container of American wine shall state either "bottled by" or "packed by" followed by the name of the bottler or packer and the address (in accordance with paragraph (c)) of the place where the wine was bottled or packed. Other words may also be stated in addition to the required words "bottled by" or "packed by" and the required name and address if the use of such words is in accordance with paragraph (a)(2) of this section.

(2) *Optional statements.* (i) In addition to the statement required by paragraph (a)(1), the label may also state the name and address of any other person for whom the wine was bottled or packed, immediately preceded by the words "bottled for" or "packed for" or "distributed by."

(ii) The words defined in paragraphs (a)(2)(iii)–(a)(2)(vi) may be used, in accordance with the definitions given, in addition to the name and address statement required by paragraph (a)(1). Use of these words may be conjoined, using the word "and", and with the words "bottled by" or "packed by" only if the same person performed the defined operation at the same address. More than one name is necessary if the defined operation was performed by a person other than the bottler or packer and more than one address statement is necessary if the defined operation was performed at a different address.

**Industry
Circular**

Number: 90-1

Date: March 21, 1990

Department of the Treasury
Alcohol, Tobacco, and Firearms Division
Washington, D.C. 20224



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**QUESTIONS AND ANSWERS REGARDING THE GOVERNMENT WARNING
STATEMENT****Proprietors of Distilled Spirits Plants, Bonded Wineries, Breweries, Importers
And Others Concerned:**

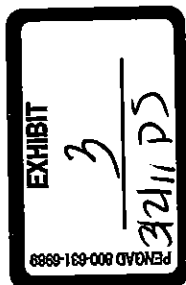
Purpose: The purpose of this circular is to address a number of questions which have arisen concerning the Government Warning statement.

Background: In accordance with the provisions of the Alcoholic Beverage Labeling Act (ABLA) of 1988, Pub. L. No. 100-690, the Bureau of Alcohol, Tobacco and Firearms (ATF) published in the Federal Register on February 16, 1989, a temporary rule (T.D. ATF-282, 54 FR 7160) requiring that the Government warning statement appear on all containers of alcoholic beverages bottled on and after November 18, 1989, for sale or distribution in the United States. On February 14, 1990, ATF published the final rule implementing the ABLA (T.D. ATF-294, 55 FR 5415). The final rule requirements, which become effective and mandatory on November 14, 1990, for alcoholic beverages bottled on or after that date, supersede the requirements of the temporary rule. Question 1 Is the Government warning statement required on containers of alcoholic beverages?

Answer 1 The term "alcoholic beverage," as defined by law, includes any beverage in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume and is intended for human consumption. Therefore, the Government warning statement is required on distilled spirits products, malt beverages and wine products containing .5% or more alcohol by volume. Question 2 How does the bottling date affect the Government warning statement?

Answer 2 Bottling date determines whether the Government warning statement is required and, if required, whether the statement must comply with T.D. ATF-282 or T.D. ATF-294.

1. Alcoholic beverages bottled before November 18, 1989 are not required to bear the Government warning statement.
2. Alcoholic beverages bottled on or after November 18, 1989 but before November 14, 1990 must bear the Government warning statement in compliance with T.D. ATF-282 or T.D. ATF-294.
3. Alcoholic beverages bottled on or after November 14, 1990 must bear the Government warning statement in compliance with T.D. ATF-294.



Question 3 Are the type size requirements for each letter of the Government warning statement different under the final rule (T.D. ATF-294) as opposed to the temporary rule (T.D. ATF-282)?

Answer 3 The temporary, regulations specified a minimum type size of one millimeter for containers having a capacity of 237 milliliters (8 fl. oz.) or less. A minimum type size of two millimeters was specified for all other containers. The final regulations have added a third type size for larger containers. Specifically, T.D. ATF-294 specifies type size requirements as follows:

<u>Container Size</u>	<u>Minimum Type Size Requirement</u>
Over 3 liters (101 fl. oz.)	3mm
Over 237 ml (8 fl. oz.)	2mm
To 3 Liters (101 fl. oz.)	1mm
237 ml or less	

Question 4 What is the maximum characters-per-inch requirement as specified in the final rule?

Answer 4

<u>Minimum Type SizeRequirement</u>	<u>Maximum Characters Per Inch</u>
1mm	40
2mm	25
3mm	12

Question 5

What are characters?

Answer 5 "

Characters" are letters, numbers, and marks. "Characters" include commas, periods, colons and parentheses. Spaces are excluded when counting the number of characters per inch.

Question 6

Must the words "GOVERNMENT WARNING" be differentiated from the rest of the statement?

Answer 6

Yes. Under the temporary regulations these words must be differentiated in some manner from the rest of the statement. Under the final rule (T.D. ATF-294), all the letters in "GOVERNMENT WARNING" must be capitalized and the two words must appear in bold print. The remainder of the statement may not appear in bold print. Underlining and/or italicizing

"GOVERNMENT WARNING" is acceptable in addition to, but not in lieu of, capitalizing all the letters in the two words and using bold print.

Question 7

What is the required format of the Government warning statement?

Answer 7

Except for the words "GOVERNMENT WARNING," the statement must appear as a continuous paragraph. Items (1) and (2) of the Government warning statement may not appear as separate paragraphs.

Question 8

Can the words "GOVERNMENT WARNING" appear on a separate line?

Answer 8

Yes, provided items (1) and (2) of the Government warning statement appear as a continuous paragraph.

Question 9

If the alcoholic beverage is sold only in intrastate commerce, must the Government warning statement be affixed to the container?

Answer 9

Yes. The Government warning statement requirement applies both to interstate and intrastate sale and distribution of alcoholic beverages.

Question 10

Must altar wine bear the Government warning statement?

Answer 10

Yes. Any alcoholic beverage for sale or distribution to members of the consuming public must be labeled with the Government warning statement.

Question 11

Must samples for consumer taste testing bear the Government warning statement?

Answer 11

Yes. The Government warning statement is required on any alcoholic beverages for sale or distribution to the consumer. Sale and distribution include, by law, samples or other distribution not for sale.

Question 12

Are distinctive liquor bottles exempt from Government warning labeling requirements?

Answer 12

No. Any container, distinctive or otherwise, in which alcoholic beverages for sale or distribution to consumers are bottled must be labeled with the Government warning statement.

Question 13

Must kegs be labeled with the Government warning statement?

Answer 13

Yes. The Government warning statement is required on kegs.

Question 14

Is the Government warning statement required on sparkling wine corked and sealed on or after November 18, 1989?

Answer 14

Yes. Sparkling wine is not considered "bottled" until the final cork and seal are in place. Therefore, regardless of when secondary fermentation took place, if the final cork and seal were not in place before November 18, 1989, the Government warning statement is required to appear on the container.

Question 15

Must a new label application be submitted to add only the Government warning statement?

Answer 15

No. However, resubmission is recommended to insure compliance with all requirements.

Question 16

Should the bottling date be indicated on the label application?

Answer 16

Yes. Indicate the bottling date in Item 12 of ATF Form 5100.31 (Application for and Certification of Label/Bottle Approval). For example, "Bottling date - before 11/18/89;" "Bottling date - after 11/18/89, before 11/14/90." Documentation should be available if requested by ATF Inspectors, Customs Officers, etc., to support the bottling date claim.

Question 17

Can I continue to submit for approval labels that have been reduced in size?

Answer 17

Yes. However, when a reduced label is submitted, indicate in Item 12 of ATF Form 5100.31 that the label has been reduced. In addition to noting

in Item 12 that the label has been reduced, submit along with the label application the actual (unreduced) label .

Question 18

Can I submit for approval one label covering different sizes (e.g., " fl. oz., 12 fl. oz., 16 fl. oz.)?

Answer 18

Although submission is not required for each size container, to insure compliance, the Bureau recommends submission of separate applications for containers of 237 ml or less, containers of over 237 ml to 3 liters and containers of over 3 liters. The container size should be indicated in Item 12 of ATF Form 5100.31. Question 19 Can I continue to submit on ATF Form 5100.31 photocopies and printers proofs of labels bearing the Government warning statement?

Answer 19

Yes, but the Bureau recommends, and in some cases may require, submission of labels in final printed form.

Question 20

Will my label application be approved if the Government warning statement appears typed on a strip label?

Answer 20

The label application will be approved with the understanding that the Government warning statement will appear on the container exactly as it had been approved on the label certificate (i.e., typed on a strip label).

Question 21

Do all certificates of label approval that do not comply with T.D. ATF-294 automatically expire November 14, 1990?

Answer 21

No. Only certificates that are qualified with a termination date automatically expire (as of the date shown on the certificate).

Question 22

Wine was imported into the U.S. after November 18, 1989 but was bottled in the foreign country prior to November 18, 1989, and does not bear the Government warning statement. What documentation may be used to substantiate the bottling date?

Answer 22

If the bill of lading is dated prior to November 18, 1989, no further documentation is required. If the bill is dated November 18, 1989, or later, Customs will accept verification of the bottling date from one of the following: a foreign government, the foreign bottler or supplier, the

Importer, or the Customs broker. Certification by the foreign bottler or supplier may be on a bill of lading, invoice or other commercial document, or on letterhead. Certification by the importer or broker may indicate that verification is being made upon the advice of the foreign bottler or supplier and should read substantially as follows: "I have been advised by the foreign supplier that the products covered by this entry were bottled prior to November 18, 1989."

Question 23

Wine to be imported into the U.S. after November 14, 1990, was bottled in the foreign country after November 18, 1989, but prior to November 14, 1990, and contains a Government warning statement that complies with the temporary regulations but not with the final rule. What documentation may be used to substantiate the bottling date?

Answer 23

If the bill of lading is dated prior to November 14, 1990, no farther documentation is required. If the bill of lading is dated November 14, 1990 or later, Customs will accept the documentation referred to in Answer 22.

Question 24

What is the penalty for violating the Government warning requirement?

Answer 24

Violation of the ABLA and the implementing regulations subjects the manufacturer, bottler, or importer to a civil penalty of up to \$10,000 per day, for each day that alcoholic beverages are manufactured, bottled, or imported for sale or distribution in the United States without the Government warning statement.

ATF would remind industry members that basic permits under the Federal Alcohol Administration Act are conditioned upon compliance with the provisions of the ABLA.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226. For telephone inquiries, call (202) 789-3150.

**Signed by
Stephen Higgins**

Director *

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